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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H-2008-161

TYSON A.A. SCHAFER, R.C.P.
13794 Covered Wagon Court
Yucaipa, CA 92399

A C C U S A T I O N

Respiratory Care Practitioner License No. 26746

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 20, 2007, the Respiratory Care Board issued Respiratory Care Practitioner License No. 26746 to TYSON A.A. SCHAFER, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“....”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“....”

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter or of any provision of Division 2 (commencing with Section 500).

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or

1 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section
4 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
5 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information, or indictment.”

7 8. California Code of Regulations, title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or act
9 shall be considered to be substantially related to the qualifications, functions or duties of
10 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
11 perform the functions authorized by his or her license or in a manner inconsistent with the
12 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
13 those involving the following:

14 “(a) Violating or attempting to violate, directly, or indirectly, or assisting
15 or abetting the violation of or conspiring to violate any provision or term of the
16 Act.

17 “....”

18 “(c) Conviction of a crime involving driving under the influence or reckless
19 driving while under the influence.

20 “....”

21 COST RECOVERY

22 9. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

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1 10. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 11. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation."

9 **CAUSE FOR DISCIPLINE**

10 **(Conviction of a Crime)**

11 12. Respondent is subject to disciplinary action under sections 3750,
12 subdivisions (d) and (g), and 3752, in that he was convicted of a crime substantially related to the
13 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
14 follows:

15 (a) On or about March 17, 2008, at approximately 12:00 a.m., Respondent
16 was observed by a California Highway Patrol Officer driving erratically and at a high rate of
17 speed. A traffic stop was initiated and a subsequent blood alcohol test revealed Respondent had
18 been driving with a 0.27 percent blood alcohol level.

19 (b) On or about June 24, 2008, in the case of *The People of the State of*
20 *California v. Tyson Adam Schafer*, case number TSB801273, before the Superior Court of
21 California, County of San Bernardino, Respondent pled guilty, pursuant to a plea bargain, to
22 violating Vehicle Code section 23152, subdivision (b) [driving a vehicle while having a 0.08
23 percent or higher blood alcohol], and admitted that he suffered a prior conviction for violating
24 Vehicle Code section 23152, subdivisions (a) [driving under the influence of alcohol] and (b),
25 and section 40508, subdivision (a) [failing to appear].

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March 8, 2005, Conviction

(b) On or about March 8, 2005, in the case of *The People of the State of California v. Tyson Adam Schafer*, case number TRE037429, before the Superior Court of California, County of San Bernardino, Respondent pled guilty to violating Vehicle Code section 23152, subdivisions (a) and (b), and section 40508, subdivision (a).

December 4, 1997, Conviction

(c) On or about December 4, 1997, in the case of *The People of the State of Arizona v. Tyson Adam Apostle Schafer*, case number MCR 9702069, before the Lake Havasu City Consolidated Court, County of Mohave, State of Arizona, Respondent pled guilty to underage consumption of alcohol in violation of Arizona Revised Statute 4-244.9.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License No. 26746, issued to Tyson A.A. Schafer, R.C.P.;
2. Ordering Tyson A.A. Schafer, R.C.P. to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: October 2, 2008

Original signed by: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant